SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 312.

JAMES H. EASTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF AND ARGUMENT FOR THE PLAINTIFF IN ERROR.

[illegible]

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IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF AND ARGUMENT FOR THE PLAINTIFF IN ERROR.

The plaintiff in error was convicted in the district court of Iowa in and for Fayette county upon an indictment charging him with the alleged offense of receiving, as president of a national bank doing business as such in said state, a deposit of one hundred dollars in money in and for said bank, in violation, as alleged, of a statute of the state of Iowa, and sentenced to imprisonment in the penitentiary of that state for a period of five years. He appealed from such judgment to the Supreme Court of Iowa, and that court, on April 12th, 1901, affirmed the judgment of the district court. He thereupon sued out this writ of error, and prays that such judgment be reversed.

STATEMENT OF THE CASE.

The indictment upon which the plaintiff in error was so convicted was found by the grand jury of Winnesheik county, in the state of Iowa, and the place of trial thereof duly changed to Fayette county, in said state. Omitting the formal parts, the indictment charges:

"That said James H. Easton on or about the 21st day of "August, A. D. 1896, in the county of Winnesheik, and state of "Iowa, aforesaid, being then and there engaged in the banking

" business as an officer, to-wit: president of the First National " Bank of Decorah, located and doing business as a bank of de- " posit and banking in the city of Decorah, in the county of Win- " nesheik and state of Iowa, did, as president of said bank as " aforesaid, unlawfully, wilfully, knowingly and feloniously per- " mit, connive at, encourage, accept, and receive on and for de- " posit in said bank, as aforesaid, a certain deposit in lawful " paper money, a more particular description of which is to these " grand jurors unknown, of and in the sum of one hundred dol- " lars, of and from one John French, being then and there " the property of said John French and of the value of $100; " the said bank being then and there insolvent, and the said " James H. Easton, then and there well knowing the said bank " was insolvent, contrary to and in violation of the statute of the " state of Iowa in such case made and provided." (Transcript of record, page 1.)

This indictment is founded upon chapter 153, acts 18th general assembly of Iowa, passed in 1880, and re-enacted with slight changes (not necessary to mention), as sections 1884 and 1885 of the code of Iowa (1897). These sections appear in chapter 12, title 9 of the code. Chapter 10 of this title provides for the organization and management of savings banks; chapter 11 for state banks, and chapter 12 for the further control and management of such banks. Sections 1884 and 1885 are as follows:

Section 1884. No bank, banking house, exchange broker, deposit office, firm, company, corporation, or person engaged in the banking, brokerage, exchange or deposit business, shall, when insolvent, accept or receive on deposit, with or without interest, any money, bank bills or notes, United States treasury notes or currency, or other notes, bills, checks, or drafts, or renew any certificate of deposit. (18 G. A., chap. 153, § 1).

Section 1885. If any such bank, banking house, exchange broker, deposit office, firm, company, corporation or person shall receive or accept on deposit any such deposits, as aforesaid, when insolvent, any owner, officer, director, cashier, manager, member or person knowing of such insolvency, who shall knowingly receive or accept, be accessory, or permit, or connive at receiving or accepting on deposit therein, or thereby, any such deposits, or renew any certificate of deposit, as aforesaid, shall be guilty of a felony, and, upon conviction, shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment in the peniten-

tiary for a term of not more than ten years, or by imprisonment in the county jail not more than one year, or by both fine and imprisonment. (Same, § 2.)

When arraigned upon the foregoing indictment, the plaintiff in error moved to set aside or quash the same upon the grounds, among others:

1st. That the statute of Iowa upon which said indictment is found does not, and was not intended to, apply to national banks, organized and doing business under the national bank act of the United States, or to the officers and agents of such banks.

2nd. That the congress of the United States having legislated upon the subject matter of national banks, provided for their organization, and authorized them, among other things, to accept and receive deposits; and prescribed rules and regulations for the government and control of such banks, such legislation excludes any by the state with reference to such banks or their business, management and control by their officers and agents; that the above mentioned acts of the legislature of the state of Iowa, if they be construed or held to apply to national banks, conflict with and are in violation of the constitution and laws of the United States.

3rd. That the courts of the state of Iowa have no jurisdiction or authority to inquire into, hear, try or determine the act of the plaintiff in error in receiving the said deposit in and for said national bank, for that said act is and was expressly authorized by the laws of the United States.

Which motion was overruled, and due exceptions taken. (Transcript, pages 2 and 3).

The plaintiff in error then demurred to the indictment, upon the grounds, among others:

* * *

2nd. That said indictment contains matter, which, if true, constitutes a legal defense or bar to the prosecution.

* * *

7th. That it appears from said indictment that said First National Bank of Decorah, Iowa, is and was at the time alleged in said indictment, a national bank, duly organized and doing a banking business under and by virtue of the laws of the United States, and that this defendant is, and was at the time alleged in said indictment, president of said bank, and as such accepted and

received on deposit in and for said bank the alleged deposit therein referred to.

8th. That the acts of the defendant stated in the indictment constitute no crime, because the statute of the state of Iowa prohibiting the receiving of deposits by a bank when insolvent, applies only to banks incorporated or doing business under the authority of the laws of this state and does not apply to national banks organized or doing business under the acts of congress.

9th. That this court has no jurisdiction to inquire into, hear, try or determine the act of this defendant in so accepting the said deposit in and for said national bank for

That said act of defendant in so accepting and receiving the said deposit in and for said bank is an act which is expressly authorized and permitted by the laws of the United States under which said First National Bank of Decorah Iowa, is organized.

10th. That if the law of Iowa under which said indictment is found applies to national banks or makes the accepting or receiving of deposits by said banks and their officers and agents an offense, it is in violation of the constitution and laws of the United States, and void.

Which demurrer was overruled and due exceptions taken. (Transcript pages 3 and 4).

The plaintiff in error then pleaded to said indictment that he was not guilty of the offense charged therein.

Upon the trial the testimony upon the part of the state, which is undisputed, shows:

That the First National Bank of Decorah, in Winnesheik county, was duly organized in 1864 as a banking association, under the acts of congress now commonly known as the "National Bank Act." The articles of association were duly signed and acknowledged by the requisite number of persons, and all things done as required by law to effect its complete organization, and certificate thereof made to the comptroller of the currency of the United States, who, on August 6, 1864, issued to the said bank the following certificate:

TREASURY DEPARTMENT.

OFFICE OF THE COMPTROLLER OF THE CURRENCY.

Washington, D. C., August 6, 1864.

Whereas, by satisfactory evidence presented to the undersigned,

it has been made to appear that the First National Bank of Decorah, in the village of Decorah, in Winnesheik county, Iowa, has been duly organized under and according to the requirements of an act of congress entitled "An Act to Provide a National Currency, Secured by a Pledge of United States Bonds, and to Provide for the Circulation and Redemption Thereof," approved June 3, 1864, and has complied with all the provisions of said act required to be complied with before commencing the business of banking under said act.

Now, therefore, I, Hugh McCulloch, comptroller of the currency, do hereby certify that the First National Bank of Decorah, Iowa, in the village of Decorah, Winnesheik county, in said state, is authorized to commence the business of banking under the act aforesaid.

In testimony whereof, witness my hand and seal of office this sixth day of August, 1864.

(Seal) HUGH McCULLOCH,
Comptroller of the Currency.

(Transcript, page 5; and see pages 8 to 10 for the articles of association and the organization certificate.

That in 1883 the bank complied with the provisions of the act enabling national banking associations to extend their corporate existence; and on February 24, of that year, the comptroller of the currency issued to it a certificate like the foregoing so certifying. (Transcript, page 6).

That the bank began business on completion of its organization, and so continued to do a general banking business at Decorah, in said Winnesheik county, until November 10, 1896, when the comptroller of the currency of the United States closed its doors, took possession of its assets, and placed them in the custody of a receiver, who has since been in charge thereof. Up to the time the comptroller so took possession, the bank, by its officers and agents, did a general banking business, including the receipt of deposits, in the usual and ordinary way. That the plaintiff in error, was one of the directors of the bank and its president from the date of its organization up to the time the comptroller so took possession of the same; and from about June 1, 1894, was one of the active managers of the bank. On August 21, 1896, one John French delivered to the plaintiff in error in the said bank at Decorah, one hundred dollars in paper money, and received from him therefor a certificate of deposit, as follows:

THE FIRST NATIONAL BANK OF DECORAH.

$100. August 21, 1896.

John French has deposited in this Bank One Hundred Dollars, payable to the order of himself six months from date in current funds on the return of this certificate properly endorsed, with interest at the rate of four per cent. per annum. No interest after maturity. This certificate will not be paid before due.

Certificate of deposit; not subject to check.

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(Transcript, page 5).

Previous to this transaction, and up to the time the bank was so closed, it had on deposit with the treasurer of the United States twenty thousand dollars in United States bonds to secure eighteen thousand dollars of national bank notes which were issued to it, and which were in circulation as a part of the currency or circulating medium of the United States. (Transcript, page 12). That the bank was regularly examined by the national bank examiners, and made the reports of its condition to the comptroller of the currency as required by law and whenever called upon therefor, and never refused to pay any of its obligations up to the time it was closed. (Baker's evidence, Transcript, page 18). That the indictment of the defendant is based upon this transaction with John French.

The testimony on the part of the state also tended to show that the bank was insolvent on August 21st, 1896, and that plaintiff in error so knew when he received the said money from John French on that date.

At the close of the state's testimony the plaintiff in error moved the court to direct the jury to return a verdict of not guilty, upon the grounds, among others:

1st. That the undisputed testimony affirmatively shows that the said First National Bank of Decorah, Iowa, was on August 21, 1896, a banking association, duly organized under and in pursuance of the laws of the United States, and that a certificate had been duly issued to said bank by the comptroller of the currency of the United States, in pursuance of the laws thereof, authorizing it to do a general banking business, including the receipt of deposits at Decorah, in Winnesheik county, Iowa, as au-

thorized by such laws of the United States, and that said bank was, on said August 21, 1896, then doing such banking business at said place under and in pursuance of and by virtue of such laws and said certificate of the comptroller of the currency of the United States and not otherwise.

2nd. That this defendant was on said August 21st, 1896, the duly appointed and qualified president of said First National Bank of Decorah; and,

3rd. That the deposit in question was accepted and received in said bank by this defendant as such president of said bank, and as authorized by said laws of the United States and the said certificate of the comptroller of the currency and not otherwise.

4th. That the laws of the United States under which said bank was so organized, authorized and permitted it by its officers and agents to receive therein deposits of money in the usual and ordinary course of its business; and that the deposit in question was so received in and for said bank, by this defendant as its said president, and not otherwise; and,

5th. That under such facts this court has no jurisdiction to inquire into, hear, try or determine the acts of this defendant in so accepting and receiving in and for said bank the said deposit, or to hear, try or determine whether or not said bank was insolvent at the time said deposit was so received, and that such facts do not constitute any offense for which defendant can be tried or punished under the laws of this state.

6th. That the facts as charged in the indictment do not constitute any offense punishable by law.

7th. That the laws of Iowa under which said indictment is found do not apply to national banks organized under the laws of the United States and doing business under the authority of and as permitted thereby; and is void as to such banks for that

8th. The general assembly of Iowa has no power or authority to enact any law that will in any manner affect or control the business or operation of national banks organized and doing business under and in pursuance of the laws of the United States and as authorized by such laws.

Which motion was overruled and due exceptions taken. (Transcript, pages 22 and 23).

The defendant offered no testimony.

After being instructed by the court, the jury returned a verdict

finding the plaintiff in error guilty of the offense charged in the indictment. (Transcript, page 30).

The plaintiff in error thereupon filed a motion in arrest of judgment, based upon substantially the same grounds as alleged in the motion to set aside or quash the indictment, the demurrer thereto, and the motion to direct the verdict. (See this motion Transcript, pages 30-31).

Which motion was overruled and due exceptions taken.

A motion for a new trial was also overruled and due exceptions taken.

The court thereupon rendered judgment against the plaintiff in error that he be imprisoned in the penitentiary of Iowa at Anamosa, at hard labor, for the period of five years, and pay the costs of prosecution; to which the plaintiff in error duly excepted. (Transcript, pages 31-32).

The plaintiff in error appealed from such judgment to the supreme court of Iowa, that being the highest court in said state in which a decision of said cause could be had, and separately assigned as error the action of said district court in overruling each of the grounds of [1] The motion to set aside the indictment; [2] The demurrer to the indictment; [3] The motion to direct a verdict of not guilty; [4] The motion in arrest of judgment; and [5] In rendering judgment against him upon the record as made in said district court. (Transcript, pages 33-34).

On April 12th, 1901, that court filed its opinion and rendered its decision, affirming the said judgment of the district court. (Transcript, pages 34-38).

In deciding the question so presented the court says:

"We do not find that this precise question has been passed upon " by the supreme court of the United States, the only tribunal that " may render a final determination of it. In the absence of such " a decision, we follow the law as announced in *State* vs. *Fields*, " without reviewing the authorities and reasons upon which it is " based." * * * "

(We append to this brief as Appendix A a copy of the opinion in *State* vs. *Fields*, 98 Iowa, 748, so referred to.)

The plaintiff in error thereupon sued out this writ of error to reverse such judgment. (Transcript, pages 38-45).

SPECIFICATION OF ERRORS.

The errors assigned in this court and relied upon by the plaintiff in error, are:

That the supreme court of Iowa erred,

First. In holding that the petitioner in accepting and receiving the deposit of money in and for the First National Bank of Decorah, Iowa, and as charged in the indictment in said suit, was subject to and amenable to sections 1884 and 1885 of the code of Iowa, (1897), and subject to prosecution and conviction under said state statutes in the courts of Iowa for so doing.

Second. In holding that the said state courts of Iowa have jurisdiction to inquire into, hear, try or determine the question of the validity of an authority of the petitioner, as president of a national bank organized under the laws of the United States, to-wit, the National Bank Act, and doing business as such in the state of Iowa, to accept and receive a deposit of money in and for such bank; or to determine the question of the validity or legality of the act of the petitioner in so doing.

Third. In holding that said sections 1884 and 1885 of the code of Iowa, (1897), are not repugnant to the constitution of the United States and to a law thereof, to-wit, the National Bank Act, in so far as they attempt to prohibit national banks, their officers and agents, from accepting and receiving deposits of money in and for such banks, and incurring an indebtedness for such banks, in the ordinary course of their business, unless the same is done in compliance with such sections of the law of Iowa; and in holding the said sections valid as against such national banks, their officers and agents, while engaged in the transaction of the ordinary business of such banks.

Fourth. In holding that an act done by the petitioner under the authority of the constitution of the United States, and of a law thereof, to-wit, the National Bank Act, and as expressly authorized by such law, to-wit, the receipt by him as president of a national bank in Iowa of a deposit of money in and for said bank is a crime against the laws of the state of Iowa and the petitioner subject to prosecution and conviction in the courts of Iowa for doing such act which is so expressly authorized by such law of the United States.

Fifth. In holding that it was within the rightful power of the state of Iowa, by an act of its general assembly, to make the act

of the president or other officer of a national bank organized under the laws of the United States and doing business as such in the state of Iowa in the transaction of the ordinary business of such bank, a crime, and to impose a penalty of fine or imprisonment upon such officer for the transaction of such business for such bank, unless the same be done in compliance with the laws of said state of Iowa.

Sixth. In denying to the petitioner the right, privilege, authority and immunity specially set up and claimed by him in said suit for an act done and authority exercised by him under the United States and the laws thereof, viz., the National Bank Act.

Seventh. In affirming the judgment of the district court of Iowa in and for Fayette county, adjudging the petitioner guilty of a violation of sections 1884 and 1885 of the code of Iowa, (1897), and sentencing him to imprisonment in the penitentiary of Iowa therefor; because said sections cannot rightfully have any force or effect as against an act done by the petitioner under a law of the United States, to-wit., the National Bank Act, and as expressly authorized by such law.

Eighth. In holding that said sections 1884 and 1885 of the code of Iowa, (1897), are not repugnant to the constitution of the United States; because they unjustly discriminate against national banks, their officers and agents, in transacting such business in Iowa, and make the incurring of a debt by such bank, in the ordinary course of its business and without any fraudulent intent, a crime or offense, and which would not be a crime or offense if incurred by other persons or corporations.

Wherefore, the petitioner, James H. Easton, prays that said judgments of the supreme court of Iowa and of the district court of Iowa in and for Fayette county, be each reversed, annulled and set aside, and that he be discharged and released from the effect thereof.

BRIEF OF THE ARGUMENT.

The legal proposition presented by the assignments of error and relied upon for the reversal of the judgment of the district court of Iowa in and for Fayette county against the plaintiff in error, and affirmed by the supreme court of that state, is,

That chapter 153 acts of the eighteenth general assembly of Iowa, enacted in 1880, and incorporated into the code of Iowa

(1897) as sections 1884 and 1885 thereof, in so far as it applies to national banks organized under the laws of the United States, and to the acts of the officers and agents of such banks in transacting their business, and in the performance of acts done by them therein, in pursuance of and as authorized by such law of the United States, is void as being repugnant to the constitution and such law of the United States.

This question was raised by the plaintiff in error in the district court of said state, the court in which the case originated, at the very threshhold of the proceedings against him, and renewed at every stage of such proceedings in said court. (Transcript, pages 2, 3, 22, 23, 30, 33). And after the judgment of said district court against him he appealed to the supreme court of Iowa and there renewed the same; but the judgment of the district was affirmed. (Transcript page 34).

I.

The plaintiff in error also contended in said district and supreme courts of Iowa that in view of the passage by congress of the National bank act, and the many decisions of this court determining the effect of such act upon the laws of the several states, that it could not have been intended by the legislature of Iowa in enacting such law that it should apply to national banks; and therefore that it should not be held to so apply; and cited among others the following named authorities:

McCullock vs. *Maryland*, 4 Wheat., 425; *Osborne* vs. *Bank*, 9 Wheat., 738; *Farmers' Nat. Bank* vs. *Dearing*, 91 U.S., 29; *Cook Co. Nat. Bank* vs. *U. S.*, 107 U. S., 445; *Commonwealth* vs. *Ketner*, 92 Penn., St., 372; *Allen* vs. *Carter*, 119 Penn. St., 192; *State* vs. *Mencke*, 56 Kas., 77.

The supreme court of Iowa in its decision of the case, however, holds that the statute does in fact apply to national, as well as state and private, banks conducting a banking business in Iowa, and "that the construction contended for would exempt all other " banks from the prohibitions and penalties of these sections, and " leave the public unprotected as against brokers and private " banks other than savings and state banks as conduct a de- " posit business." (Transcript, page 35).

It is doubtless our misfortune that we were unable to state our contention in this respect in such manner as to enable that court to understand our meaning. We certainly did not claim before

that court that such sections apply only to state and savings banks organized under title 9 of the code of Iowa. What we did claim will be best determined from a quotation from our brief in concluding our argument upon this proposition as follows: "It " would seem, then, that it must be held that the purpose of the " general assembly of Iowa was to provide for the organization " of state and savings banks and that the acts therefor together " with the acts of the eighteenth general assembly (sections 1884 " and 1885 of the code) form a complete system for the organiza- " tion, regulation, control and management of their business, *and* " *of such firms, companies and other persons* as do a banking " business, though *not incorporated under any statute*, so far as " the legislature deemed it advisable to regulate or control their " business. So construed, these sections are in harmony with the " rest of title 9 and can be upheld as a whole; otherwise they are " invalid as to national banks, as we shall presently endeavor to " show." It will thus been seen that the court entirely misapprehended our contention. But this is perhaps immaterial, as the court holds, as above stated, that these sections do in fact apply to national banks and "that it has no doubt that it was the intention of the legislature of Iowa that they should so apply."

In effect this holding would also make section 1889 of the code applicable to national banks, for this section provides, among other things, that " * * * No corporation shall engage in the " banking business, receive deposits and transact the business " generally done by banks *unless it is subject to and organized* " *under the provisions of this title*, or of the banking laws of the " state heretofore existing. * * * Any corporation violating " this section shall forfeit its charter, at the suit of the attorney " general, and said corporation, its officers, directors and agents, " shall be punished by a fine of not less than five hundred dollars " or imprisonment of not less than two years in the penitentiary, " or both, at the discretion of the court."

It may be said that as this is the decision of the highest court of a state construing a statute of such state, such construction, under familiar rules, is conclusive upon this court. If it be so held, then the question must be determined by this court as though this statute in terms prohibited "any national bank, doing business in Iowa, and its officers and managers," from receiving deposits of money in and for such bank except in compliance with the stat-

utes of Iowa. This brings us to the vital question in the case, viz.:

II.

If such law of Iowa does in fact apply to national banks, as well as to incorporated state banks, and individuals conducting a private banking business in Iowa, is it valid in so far as it applies to such banks, their officers and agents, conducting business in Iowa under the laws of congress?

We contend that it is not, and that the legal propositions which so determine are: that where an act is authorized to be done by a valid law of the United States, such act is thereby withdrawn from the operation of the criminal laws of the state; that such a law excludes any by the state upon the subject unless expressly permitted by the law of congress; and that the performance of such an act in pursuance of and as authorized by such law cannot be punished by the state as an offense against any of its laws. These propositions are clearly stated and held in the following named cases:

McCullock vs. *Maryland*, 4 Wheat., 425; *Osborne* vs. *United States Bank*, 9 Wheat., 738; *Ohio* vs. *Thomas*, 173 U. S., 276; *Prigg* vs. *Pennsylvania*, 16 Pet., 539; *Brown* vs. *Maryland*, 12 Wheat., 449; *Bank* vs. *Dearing*, 91 U. S., 29; *Schoellenberger* vs. *Pennsylvania*, 171 U. S., 1; *Thomas* vs. *Loney*, 134 U. S., 372; *Cunningham* vs. *Neagle*, 135 U. S., 1; *Cook County National Bank* vs. *United States*, 107 U. S., 445; *In re Waite*, 81 Fed. Rep., 359; *Commonwealth* vs. *Ketner*, 92 Penn. St. 372; *Allen* vs. *Carter*, 119 Penn. St., 192; *State* vs. *Mencke*, 56 Kas., 77; *People* vs. *Fonda*, 62 Mich., 401.

The distinction between the acts of the officers and agents of the bank as such in doing that which the law of congress authorizes in the performance of the business of such banks, and the rights of the bank under such acts, or contracts made thereby, must be observed and kept in mind. It is only upon the former that the law of Iowa is intended to, and does in fact, operate if it is valid.

The supreme court of Iowa finds and holds in this case that when the plaintiff in error received this hundred dollars from John French, on August 21st, 1896, the "First National Bank of De-" corah was open and transacting business in the usual manner; " had been for a long time prior thereto; and continued to do so

" until about November 10th, 1896, when it was found to be in-
" solvent and put into the hands of a receiver." (Transcript, page 34). This fact is conclusively established by the undisputed testimony in the case; which also shows that such receiver was appointed by the comptroller of the currency of the United States. The court then quotes the legal propositions stated by us and says, "This statement of the law is in substantial accord with
" the authorities, and the inquiry is, whether defendant was au-
" thorized by the law of congress to do the act for which he has
" been convicted." (Transcript, page 36).

1st. *Was the plaintiff in error, then, as the court inquires, authorized by the laws of congress to receive this money from John French, for the bank, on August, 21st, 1896, upon the terms stated in the certificate of deposit or paper issued therefor by him as president of the bank?*

Sections 5133 to 5243, inclusive, Revised Statutes United States, are known as the "National Bank Act;" (Section 1, act of June 20, 1874). A bank organized in pursuance of this law has authority, among other things:

Section 5136. * * 3d. To make contracts. * * 6th. To prescribe, by its board of directors, by-laws regulating the manner in which * * its general business shall be conducted, and the privileges granted it by law exercised and enjoyed. 7th. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes and drafts, bills of exchange, *by receiving deposits*; by buying and selling exchange; * * by loaning money on personal security. * *

Section 5145. The affairs of such association shall be managed by not less than five directors, who shall be elected by the shareholders. * *

And it is required by

Section 5159. To deposit with the treasurer of the United States as security for its circulating notes, United States interest bearing bonds in an amount not less than one-fourth of its capital.

Sections 5214-15. To report to the treasurer of the United States twice each year the average amount of its deposits, and to pay to said treasurer each half year a tax upon such deposits.

Section 5202. No such association shall at any time be indebt-

ed or in any way liable to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by loss or otherwise, except on account of demands of the following nature, * * moneys deposited with or collected by the association.

Sections 5211-12. Every such association shall make to the comptroller of the currency not less than five reports during each year, (and special reports as often as he may require), according to such form as may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, * * which report shall exhibit in detail and under proper heads the resources and liabilities of the association. * *

Section 5240. The comptroller of the currency shall appoint a suitable person or persons to make the examination of the affairs of every banking association, who shall have power to make a thorough examination into all the affairs of the association, and in doing so to examine any of the officers or agents thereof on oath, and make a full and detailed report of the condition to the comptroller.

Section 5234, (as amended by section 1 of the act of June 30th, 1876). Whenever the comptroller becomes satisfied of the insolvency of such a bank he may, after due examination of its affairs, appoint a receiver, who shall take possession of the assets of such association, wind up its affairs, and make ratable distribution of its assets.

Section 5209 imposes severe penalties upon any officer or agent of such association who violates any of the provisions of such National Bank Act.

This act covers the entire subject matter of national banks; provides for their organization, the business they may transact, and for the regulation, management, and control of such business under the supervision of an officer of the United States; expressly authorizes the bank, when organized, *to receive by its officers deposits of money* to an unlimited amount without other restrictions or conditions than those imposed by the act itself; and it would seem directly answers in the affirmative the inquiry as above propounded by the supreme court of Iowa. That court, however, refers to its former decision in *State* vs. *Fields* as holding that the receipt of a deposit by a national bank officer *is not within the provisions of the laws of the United States*, but subject to such conditions as the several states may see fit to impose

thereon. An analysis of this decision will show, we think, that it is grounded upon two propositions, viz.: (1) That national banks are organized and their business prosecuted for the purpose of private gain; (2) That congress has imposed no restrictions upon the bank in receiving deposits, nor penalties upon its officers for so doing. It is therefore concluded that the state may regulate this private business of such banks and impose such conditions and restrictions upon the transaction thereof as it sees fit, and punish the bank and its officers for transacting such business in violation of such conditions and restrictions. It is believed that such propositions are not well founded, and that the conclusion drawn therefrom is directly opposed to those of this court in the cases above cited.

In *Osborne* vs. *Bank*, 9 Wheat., 738, it appears that the legislature of Ohio had passed a law levying a tax upon any bank that should transact a banking business in that state unless allowed by its laws to do so, and authorized the auditor of state to seize the property of the bank to satisfy this tax. The United States Bank continued to transact business in the state in violation of this state law and Osborne as auditor of state caused to be seized certain moneys of the bank and was about to apply the same in satisfaction of the tax. The bank brought suit in the United States circuit court to restrain the collection of the tax and to have the money seized by the auditor restored to it, and upon the hearing in the circuit court the bank was awarded a decree as prayed, and Osborne appealed. Chief Justice Marshall, in delivering the opinion of the court, beginning at page 850 says, (after disposing of the question of jurisdiction): "While it (the " bank) is the great instrument by which the fiscal operations of " the government are effected, it is also trading with individuals " for its own advantage. The appellants endeavor to distinguish " between this trade and its agency for the government. * * " While they seem to admit the right to preserve this corporate " existence, they deny the right to protect it in its trade and busi- " ness. * * Let this distinction be considered. Why is it that " congress can create or incorporate the bank? This question " was answered in the case of *McCullock* vs. *Maryland*. It is an " instrument which is necessary and proper for carrying on the " fiscal operations of the government. Can this instrument, on " any rational calculation, effect its object unless it be endowed " with that faculty of lending and dealing in money, which is

"conferred by its charter? If it can, there will be much difficulty "in sustaining that essential part of the charter. If it cannot, "then this faculty is necessary to the legitimate operations of "the government, and was constitutionally and rightly en- "grafted on the institution. It is in that view of the subject the "vital part of the corporation. * * Deprive a bank of its trade "and business which is its sustenance, and its corporate charac- "ter will be a very useless attribute. The distinction then has "no real existence. To tax its faculties, its business and occupa- "tion is to tax the bank itself; to destroy or preserve the one is "to destroy or preserve the other. * * We do not maintain "that the corporate character of the bank exempts its operations "from the action of state authority. If an individual were to be "endowed with the same faculties for the same purposes, he "would be equally protected in the exercise of those faculties. "The operations of the bank are believed not only *to yield the* "*compensation for its services* to the government, but to be es- "sential to the performance of these services. Those operations "give its value to the currency in which all the transactions of "the government are conducted; they are therefore inseparа- "bly connected with those transactions, and are therefore of "the very essence of its character as a national instrument. "The business of the bank constitutes its capacity to perform its "functions as an instrument for the money transactions of the "government. Its corporate character is merely an incident "which enables it to transact that business more beneficially. "Were the secretary of the treasury to be authorized by law "to appoint agencies throughout the Union to perform the pub- "lic functions of the bank and to be endowed with its faculties "as a necessary auxiliary to these functions, the operations "of those agents would be as exempt from the control of the "states as the bank, and not more so. If instead of the secre- "tary of the treasury, a distinct office were to be created for the "purpose and filled by a person who should receive as a compen- "sation for his time, labor and expense, the profits of the bank- "ing business instead of other emoluments to be drawn from the "treasury, would each state in the Union possess a right *to con-* "*trol these operations?* The question on which this right must "depend must always be: are these faculties so essential to the "fiscal operations of the government as to authorize congress to "confer them? Let this be admitted, and the question: does the

" right to preserve them exist? must always be answered in the " affirmative. Congress was of opinion that these faculties were " necessary to enable the bank to perform the services which are " exacted from it and for which it was created. This was cer- " tainly a question proper for the consideration of the legislature, " but were it now to undergo revision who would have the hardi- " hood to say that without the employment of a banking capital " those services can be performed? * * And who will venture " to affirm that *the separation of them would not materially af-* " *fect and essentially impair, if not totally destroy*, the utility of " the machine to the government? And if this be true, the capa- " city to carry on this trade is a faculty indispensable to the char- " acter and object of the institution." After disposing of the contention that congress should have expressed the exemption of the bank from state control, and not being so expressed ought not to be implied by the court, and of some other questions, he continues: "The appellants rely greatly upon the distinction between " the bank and the public institutions, such as the mint or the " postoffice; and the connection of the government with the bank " is likened to that with contractors. It will not be contended " that the directors, or other officers of the bank, are officers of " the government. But it is contended that, were their resem- " blance to contractors more perfect than it is, the right of the " state to control its operations, if those operations be necessary " to its character as a machine employed by the government, can- " not be maintained. Can a contractor for supplying a military " post with provisions be restrained from making purchases with- " in any state? * * Or could he be fined or taxed for doing so? " We have not yet heard these questions answered in the affirma- " tive. It is true that the property of the contractor may be " taxed, as the property of other citizens; and so may the local " property of the bank. *But we do not admit that the act of* " *purchasing* * * can be under state control. * * Consider- " ing the capacity of carrying on the trade of banking, as an im- " portant feature in the character of this corporation, which was " necessary, to make it a fit instrument for the objects for which it " was created, the court adheres to its decision in the case of *Mc-* " *Cullock* vs. *Maryland*, 4 Wheat., and is of opinion that the act " of the state of Ohio is repugnant to a law of the United States " made in pursuance of the constitution, and, therefore, void. * " And at page 859 he says: "The foundation of the argument in

"favor of the right of the state to tax the bank is laid in the sup-
"posed character of that institution. The argument supposes
"the corporation to have been originated for the management of
"an individual concern, to be founded upon contract between in-
"dividuals, having private trade and private profit for its great
"end and principle object. If these premises were true, the con-
"clusion drawn from them would be inevitable. • • But the
"premises are not true; the bank is not considered as a private
"corporation whose principal object is individual trade and indi-
"vidual profit, but as a public corporation created for public and
"national purposes. "That the mere business of banking is in
"its own nature a private business, and may be carried on by in-
"dividuals or persons having no political connection with the
"government is admitted, but the bank is not such an individual
"or company. It was not created for its own sake or for private
"purposes. *It has never been supposed that congress could cre-*
"*ate such a corporation.* The whole opinion of the court in the
"case of *McCullock* against *Maryland* is founded on and sustain-
"ed by the idea that the bank is an institution which is necessary
"and proper for carrying into effect the power vested in the gov-
"ernment of the United States."

In *McCullock* vs. *Maryland*, 4 Wheat., the facts, as will be remembered, were that an act of the legislature of the state of Maryland prohibited any bank not organized under the laws of that state and any officer thereof from issuing any bank notes except upon stamped paper furnished by the state of Maryland therefor, and provided that any bank or officer violating said law should forfeit for each violation a certain amount, which might be recovered by indictment or action of debt. McCullock, as cashier of a national bank organized under the laws of congress, issued a bank note on behalf of the bank in violation of the provisions of such law of the state, and an action was brought by the state to recover the penalty provided by the act of its legislature. It was held that congress not only had the power under the constitution to authorize the organization of the bank, but that it was the sole judge of the necessity for its organization; and when organized it was an instrumentality of the government to aid it in carrying on its fiscal operations; and that the state could not rightfully impose any conditions or restrictions upon any act of the bank which congress had authorized it to do.

In *Farmers' National Bank* vs. *Dearing*, 91 U. S., 29, a statute of the state of New York imposed as a penalty for the taking of a greater rate of interest upon a loan of money in that state than allowed by its laws, the forfeiture of the entire debt. The court of appeals of that state held this law applicable to and valid as against a national bank doing business in that state. In reversing such judgment this court says: "National banks organized " under the National Bank Act are instruments designed to be " used to aid the government in the administration of an impor- " tant branch of the government service. They are means appro- " priate to that end. Of the degree of the necessity which existed " for creating them congress is the sole judge. Being such means, " brought into existence for this purpose, and intended to be so " employed, the state can exercise no control over them nor in " any wise affect their operation except in so far as congress may " see proper to permit. Against the national will the state have " no power, by taxation or otherwise, to retard, impede, burden, " or in any manner control the operations of the laws enacted by " congress to carry into execution the powers vested in the gen- " eral government. • • The principle announced in the authori- " ties cited is indispensable to the efficiency, the independence, and " indeed to the beneficial existence, of the general government; " otherwise it would be liable, in the discharge of its most impor- " tant trusts, *to be annoyed and thwarted by the will or caprice* " *of every state in the Union.* • • It must be borne in mind that " the constitution of the United States, and the laws that shall be " made in pursuance thereof, are the supreme law of the land, and " that this law is as much a part of the law of each state, and as " binding upon its authorities and people, as its own local consti- " tution and laws. • • In any view that can be taken of this " 30th section the power *to supplement it by state legislation* is " conferred neither expressly nor by implication."

In *Cook County National Bank* vs. *United States*, 107, U. S., 445, this court in speaking of the effect of the National Bank Act upon another statute of the United States previously passed, says: " We consider the National Bank Act as constituting by itself a " complete system for the establishment and government of na- " tional banks, prescribing the manner in which they may be " formed, the amount of circulating notes they may issue, and the " security to be furnished for the redemption of those in circula- " tion, * * their liability to be placed in the hands of a receiver,

"and the manner in such event in which their affairs shall be "wound up and their property applied to the payment of their "debts. Everything essential to the formation of the banks; "the issue, security and redemption of their notes; the winding "up of the institutions; and the distribution of their property, "are fully provided for as in a separate code by itself, neither lim- "ited nor enlarged by other statutory provisions with respect to "the settlement of demands against other insolvent estates. * * "A law embracing an entire subject, dealing with it in all its "phases, might thus withdraw the subject from the operation of "a general law as effectually as though the general law was re- "pealed. * * "

The later decisions of the state courts are to the same effect. Only a few need be referred to.

In *State* vs. *Mencke*, 56 Kas., 77, the defendant, as cashier of a national bank in Kansas, was indicted for knowingly receiving deposits in said bank when it was insolvent, the indictment being under a statute of Kansas in all respects the same as that of Iowa. The indictment was quashed upon the ground that the statute did not apply to national banks, though it in terms prohibited "any bank and its officers and agents" from accepting deposits when such bank was insolvent. The state appealed, and the supreme court in affirming the judgment quashing the indictment says: "By an examination of the title and the several pro- "visions of the code it will clearly appear that it was not the "purpose of the legislature to regulate or control the business "conducted by national banks, nor that the penalties prescribed "would be operative as against the officers of national banks. "It first provides for the organization of banks, and as the state "has no power to organize or control national banks, it is mani- "fest that no other than state banks was in mind. * * The "supervision and control of banks and banking officers, for "which provision was being made, was given to a bank commis- "sioner, whose duties are prescribed by the same act, and cer- "tainly it could not have been the legislative purpose to give "that officer supervision and control of national banks." The same is true of the statute of Iowa, which appears in "Appendix B" hereto appended.

In *Commonwealth* vs. *Ketner*, 92 Penn. St., 372, the defendant as the cashier of a national bank, was indicted for the alleged offense of embezzlement of the funds of such bank. In ordering his

discharge upon habeas corpus from the arrest under such indictment the court says: "The statute of this state does not in terms " refer to national banks, and we must presume that when the " legislature used the words 'any bank' it referred to banks cre- " ated under and by virtue of the laws of Pennsylvania. * * An " act of the assembly prescribing the manner in which the busi- " ness of all banks should be conducted could not by implication " apply to national banks, for the reason that the affairs of such " banks are exclusively under the laws of congress. Much less " can we by mere implication extend penal statutes to such insti- " tutions." It is held that the court was without jurisdiction to try the defendant, and he was discharged.

In *Allen* vs. *Carter*, 119 Penn. St., 192, a law of Pennsylvania prohibited the cashier of any bank in that state from engaging in any other business; and it is held that such law has no application to cashiers of national banks, though in terms it extended to "all banks." It was contended in this case that inasmuch as congress had imposed no restrictions upon the cashiers of national banks from engaging in other business, that the state law would apply, as held in *State* vs. *Fields*. The court, however, says: " We are of opinion that the distinction referred to is one with- " out a difference. *Commonwealth ex rel. Torrey* vs. *Ketner*, " 92 Penn. St., 372, was decided upon the broad ground that our " statutes in regard to embezzlement do not apply to cashiers of " national banks. * * We held then, and hold now, to the " broader position that our statutes have no application. The " national banks are creatures of another sovereignty. The Na- " tional Bank Act and its supplements are a complete system for " the government of these institutions. Conceding the power of " congress to create the system I am unable to see how it can be " regulated or interfered with by state legislation. * * If the " state may impose one qualification upon national banks why " not another? And if so, they will be liable to be interfered with " in every step, and it might not be long before the whole nation- " al banking system would have to be thrown aside as so much " worthless lumber." *People* vs. *Fonda*, 62 Mich., 401, and *Slaughter* vs. *Bank*, 109 Ala., 159, are to the same effect.

The foregoing cited authorities show the effect of the National Bank Act upon the laws of the state designed to operate upon or affect the operations of national banks, or their officers or agents, in transacting the ordinary business of such banks. Other de-

cisions show the effect of state laws intended to affect or operate upon other acts authorized to be done by a law of the United States, thus,

In *Ohio* vs. *Thomas*, 173 U. S., 276, the defendant was convicted in a state court of Ohio for violating a statute of that state regulating the sale and use of oleomargarine, and sentenced to pay a fine and to be imprisoned until it was paid. He refused to pay the fine, and upon his application to the circuit court of the United States for the southern district of Ohio, was released and discharged therefrom upon habeas corpus, upon the ground that the state court had no jurisdiction to try him for the alleged offense of which he was convicted. At the time of the act for which he was convicted he was governor of a branch of the National Home for Disabled Volunteer Soldiers, located in Ohio, and the act for which he was so convicted was for using oleomargarine in such home without complying with the provisions of an act of the legislature of the state regulating the sale and use of such article. This home was created and established under the provisions of an act of congress so authorizing; was controlled by a board of managers having certain powers, among them to make by-laws, rules and regulations for carrying on the business and government of the home. In affirming the judgment of the circuit court and of the circuit court of appeals for the sixth circuit, this court says: "We mean by this to say that federal offi-"cers who are discharging their duties in the state and who are "engaged in superintending the internal government and man-"agement of a federal institution under the lawful direction of its "board of managers, with the approval of congress, are not sub-"ject to the jurisdiction of the state in regard to matters which "are thus approved by federal authority."

The only act of congress authorizing the act of the defendant was, that it had made an appropriation to cover the expenses of maintaining the home for a given period, based upon an estimate thereof made by its board of managers, which estimate, it seems, included an item for the purchase of oleomargarine. In answer to the contention of the state that neither the governor nor board of managers could violate the law of the state when the acts constituting the infringement are not necessary for the government and management of the home, the court says: "This may be conced-"ed and still the conviction of the appellee be invalid, because we "find in this record the authority of the United States for his act.

" * * The act of the governor of the home in serving oleomar-
" garine was authorized by congress, and it was therefore legal,
" any act of the state to the contrary notwithstanding. Under
" such facts the state court had no jurisdiction to try the defend-
" ant for the acts charged in the complaint:" *In re Waite*, 81 Fed. Rep., 359, is cited with approval by the court in support of its conclusion. The conviction of the defendant is held invalid upon two grounds, viz.: (1) That the act charged as an infringement of the state law was performed by him as a part, or at least within the scope, of his duties as governor of the home; and, (2) though such an act may not have been necessary for the government and management of the home for the purposes for which it was created, yet having been done by him under and by virtue of a law of the United States (because an appropriation had been made by congress to cover an estimated item of expense, for the purchase of oleomargarine) it was not within the lawful power of the state to punish such act as an offense against its laws.

In re Waite, thus referred to, the petitioner Waite was a clerk in the office of the commissioner of pensions of the United States. The law of congress authorizes the commissioner to detail clerks from such office to investigate the merits and validity of claims of disabled soldiers who are applicants for pensions under the laws of the United States; but they have no power to compel the making of an affidavit, or the giving of testimony in any way. (Rev. Stat. U. S., sec. 4744). The petitioner Waite had been detailed by the commissioner of pensions as one of such examiners, and in the performance of his duties as such called upon one Andrus, in Howard county, Iowa, Andrus being an applicant for a pension, and requested him to make a statement and affidavit in regard thereto. Andrus claimed that he declined to make or sign such a statement as the examiner had prepared because it was untrue, and that thereupon the examiner "maliciously threatened to accuse him of the crime of perjury" in making a certain affidavit and to prosecute him to conviction therefor if he would not sign and swear to the statement as prepared by the examiner. For this alleged act Waite was indicted by the grand jury of Howard county, under section 4767 of the code of Iowa (1897), (which imposes a penalty for maliciously threatening to accuse another of a crime, with intent thereby to compel him to do an act against his will), and upon the trial in the district court it was found by the jury as a fact that he had committed this offense as

alleged; and it was held by the court that in so doing he had exceeded his authority and stepped outside of the duties he was authorized to perform under the laws of the United States, and that such law afforded him no protection for so violating the law of the state; he was adjudged guilty and sentenced to pay a fine and to be imprisoned until such fine was paid. Upon appeal the supreme court of Iowa affirmed the judgment of the district court. See *State* vs. *Waite*, 101 Iowa, 377. Thereupon Waite applied to the United States district court for the northern district of Iowa for a writ of habeas corpus, upon the grounds that the acts so charged in the indictment were done by him within the scope of his duties as an agent of the United States and in pursuance of and under the authority of its laws; that the state courts had no jurisdiction to try him for said acts. The writ was granted, and upon the final hearing thereof, he was discharged by Judge Shiras. This decision was affirmed by the United States circuit court of appeals for the eighth circuit. In the course of his opinion, Judge Shiras, says: "The rule deducible from the decided cases, and "well sustained on principle and authority, is, that where a per-"son seeks the benefit of the laws of the United States upon some "matter wholly within federal control * * the test of the le-"gality of the acts done by him is to be found in the laws of the "United States. It is clear *that the state cannot directly legis-"late upon these matters* because they are out of the plane of "state control and jurisdiction, and therefore the statutes of the "state cannot by judicial interpretation be made applicable "thereto. * * The state statutes do not furnish the test of the "legality or criminality of the acts done by the pension examiner "when engaged in investigating the merits of a claim under the "pension laws." Again, he says: "The question which marks "the limit of the state jurisdiction is whether the person sought "to be called to account was acting under *the authority of "the United States*, when the acts complained of were done in "and about a subject matter within federal control, * * for the "criminal statutes of the state are not applicable to acts done "within the plane of federal jurisdiction and under the authority "of the United States. Whenever, therefore, it is made to appear "in a criminal case pending in the state court that the acts "charged in the indictment were done by defendant as an officer "or agent of the United States in and about a matter within

"federal control * * then it is made to appear that the court "is asked to assume a jurisdiction which it cannot rightfully ex- "ercise; and if that court entertains the case and proceeds to ad- "judicate on the question of the extent of the authority possess- "ed by officers of the United States, *testing the same by the pro- "visions of state statutes* it proceeds at the peril of having its "jurisdiction questioned and denied either by writ of error to the "supreme court of the United States, or by a writ of habeas cor- "pus from either of the courts of the United States." In conclu- sion it is held that the petitioner was entitled to be discharged from custody and released from payment of the fine imposed for the reasons: "First. That it appeared that it was being at- "tempted to apply the criminal provisions of the statutes of the "state to acts done and proceedings had under the laws of the "United States. * * Third. That it was made to appear that "it was sought to subject an officer or agent of the United States "to punishment under the criminal statutes of the state for acts "done by him under the authority of the United States in connec- "tion with a subject matter wholly within federal control and "jurisdiction."

At the time this case was before Judge Shiras, the *State* vs. *Thomas* was before Judge Taft in the circuit court of the United States in Ohio, and the same conclusion was independently reached by him. See his opinion, 82 Fed. Rep., 302.

In *Cunningham* vs. *Neagle*, 134 U. S., 1, it is held that acts done in pursuance of an authority of the United States, whether that authority is given by statute or by an officer of the govern- ment in his official capacity, are acts authorized by virtue of the laws of the United States, and therefore beyond the power of the state courts to inquire into.

It may be urged, as it was before the supreme court of Iowa in this case, that the last three cases are where officers or agents of the United States were engaged in the performance of their duties as such, and therefore are not applicable. *In re Waite*, however, if the petitioner did that which the jury found upon the trial that he did do, then he did an act entirely outside of his duty as an agent of the pension bureau, and one not author- ized by any law of the United States. In the present case, the plaintiff in error received this money as president of a national bank, an agency or instrumentality of the United States which can only act through its officers or agents; and he is therefore

within the principle of the decisions. *Osborne* vs. *Bank*, above, at page 866. A national bank, when organized in pursuance of the laws of the United States, is a federal institution, an "instrumentality of the government, a means appropriate to the end for which it is permitted to be organized," as well as the soldiers' home or any other institution which congress may see fit to establish, and as much entitled to the protection of its laws.

It is not alone, however, an officer or agent of the United States that is within the principle of the authorities. The test is, Is the act one which a law of the United States authorizes to be done? If it is, then the performance of such act is within the protection of such law, and he who is authorized to perform it is entitled to the protection of such law in so doing, whether he does it in his capacity as an individual or as an officer or agent of the United States. It is so held in numerous cases in this court. Thus,

In *Prigg* vs. *Pennsylvania*, 16 Pet., 539, the plaintiff was convicted in the courts of Pennsylvania of a violation of a statute of the state for doing an act which he was authorized to do under the laws of the United States commonly known as the Fugitive Slave Law. Under such law the plaintiff, as agent of a citizen of the state of Maryland, forcibly seized, in the state of Pennsylvania, a negro woman claimed by the citizen of Maryland as a slave who had escaped from said state into Pennsylvania, and carried her back and delivered her to such citizen of Maryland. For this act he was indicted and convicted under a statute of Pennsylvania forbidding such acts. He justified his act upon this law of congress, and contended that if the law of Pennsylvania under which he was convicted was held to apply to the act done by him it was void as being an unauthorized exercise of power on the part of the state legislature over a matter reserved to congress under the constitution of the United States, and upon which congress had legislated. Three questions at least were considered and decided by the court: (1). Was the control of the subject matter under consideration exclusively reserved to congress under the constitution? (2). If only authority concurrent with that of the states was given to congress, then did the fact that congress had legislated upon the subject matter operate to exclude any legislation by the state thereon? (3). Was the act of the legislature of Pennsylvania prohibiting the doing of an act authorized by congress to be done, void as being repugnant to such law of congress? Each of these questions is answered or de-

cided in the affirmative; the first and second by a majority, and the last by the unanimous opinion of the court. Mr. Justice Story delivered the majority opinion; and in speaking of the scope and effect of the acts of congress upon subjects properly within its control, beginning at page 617, says: "This act may be truly " said to cover the whole grounds of the constitution, * * not " because it exhausts the remedies which may be applied by con- " gress if the provisions of the act in practice shall be found not " to attain to the object intended; but because it points out fully " all the modes of attaining these objects which congress, *in its* " *discretion, has as yet deemed expedient or proper to enact.* If " this be so, then it would seem, upon just principles of construc- " tion, that the legislation of congress, if constitutional, *must* " *supersede all state legislation upon the same subject*, and by ne- " cessary implication prohibit it. For, if congress have a consti- " tutional power to regulate a particular subject, and does regu- " late it in a given manner, and in a certain form, it cannot be " that state legislatures have a right to interfere, and, as it were, " by way of complement to the legislation of congress, *prescribe* " *additional regulations, and what they may deem auxiliary pro-* " *visions for the same purpose.* In such case, the legislation " of congress, in what it does prescribe, manifestly indicates " that *it does not intend that there shall be any further legisla-* " *tion* to act upon the subject matter. Its silence as to what " it does not do, is as expressive of what its intention is as the " direct provisions made by it." It is therefore held that when congress has legislated upon a subject rightly within its control, though not exclusively so, such legislation excludes any by the states upon the same subject; and also that the act of the legislature of Pennsylvania in prohibiting or imposing a penalty for doing an act directly authorized by congress was in contravention of the paramount law of congress, and void.

To the same effect is *Hall* vs. *DeCuer*, 95 U. S., at 499, where, in speaking of the effect of the legislation of congress, Mr. Justice Clifford says: "In such case the legislation of congress in what " it does prescribe manifestly indicates that it does not intend " that there shall be any further legislation to act upon the sub- " ject matter. Its silence as to what it does not do is as express- " ive of what its intention is as the direct provisions made by it."

In *Brown* vs. *Maryland*, 12 Wheat., 436, the plaintiff in error was convicted in a state court of selling a package of foreign

goods imported by him, without paying the license required therefor by a statute of the state. This court, in setting aside such judgment and conviction, says, at page 448: "Any penalty "inflicted upon the importer for selling the article, in his charac- "ter as importer, must be in opposition to the act of congress "which authorizes importation. Any charge on the introduc- "tion and incorporation of the articles into and with the mass "of property in the country, must be hostile to the power given "to congress to regulate commerce, and therefore void."

In *Schollenberger* vs. *Pennsylvania*, 171 U. S., 1, the validity of an act of the legislature of Pennsylvania prohibiting the manufacture or sale within that state of oleomargarine is called in question. In holding this law to be invalid, the court holds that it is not within the rightful power of the state to prohibit the introduction or sale therein of a recognized article of commerce manufactured in another state. That the act of congress of August 2, 1886, recognizes oleomargarine as a legitimate article of commerce, regulates the manufacture and sale thereof, imposes a tax thereon, and upon wholesale and retail dealers therein, and because of this that the several states have no right to prohibit its introduction from other states and sale therein *so long as it is introduced and sold as and for what it really is*. It will be observed that by the Oleomargarine Act of August 2, 1886, Sec. 3243 Rev. Stat., U. S., relating to internal revenue is made to apply so far as applicable, which section expressly provides that the revenue act shall not exempt a person from any penalties lawfully imposed by the laws of any state, etc. The National Bank Act contains no such provisions. The principle announced and holding is, that if the person does only that which the act of congress or the federal constitution authorizes or recognizes as a legitimate act, the state has no power to say that such act constitutes a crime.

Leisy vs. *Hardin*, 135 U. S., 100, and *Rhodes* vs. *State of Iowa*, 170 U. S., 412, are to the same effect. See also *Thomas* vs. *Loney*, 134 U. S., 372; *in re Blackbird*, 109 Fed. Rep., 139, and *Peters* vs. *Malin*, 111 Fed. Rep., 244, and cases cited.

The effect, therefore, of the National Bank Act upon state laws is to suspend the operation of those previously enacted, and to render invalid those subsequently enacted, in so far as they affect the persons and subject matter covered by the acts of congress.

Sturgis vs. *Crowninshield*, 4 Wheat., 122; *Tua* vs. *Carriere*, 117 U. S., 201; *Harbaugh* vs. *Costello*, 56 N. E. Rep., 303, (Ill).

These cases arose under the National Bankruptcy Law, and in the last named case it is said: "The state laws in force must "yield to it, and can no longer operate upon persons or cases "within the purview of the federal statute. * * If the state "law and the federal act operate upon the same subject matter "and upon the same persons, * * they cannot go together "without direct and positive collision, and in such case the fed-"eral enactment suspends or supersedes the state law."

In *State* vs. *Fields* a supposed case is stated thus: "Suppose "that the deposit in question had been of such an amount that "the depositor thought it important to inquire of the president "of the bank as to its condition as to solvency, and had been "answered that it had ample means and a large surplus, and on "the face of such representation the deposit had been procured, "and in a few days it should turn out that these representations "were, to the knowledge of the president, untrue." And it is asked, "What defense could be interposed to an indictment under "the statute for obtaining money by false pretenses?" It is conceded that the supposed case is not parallel with the one before the court. That court, however, holds that the fact alone that a national bank remains open and conducts its business in the usual manner under the laws of the United States is the equivalent of an affirmative fraudulent representation that it is solvent, and that those so permitting the bank to remain open and conduct its business are subject to prosecution and conviction for obtaining money by false pretenses from those depositing money in such bank, if it was in fact insolvent, and *National Bank* vs. *Commonwealth of Kentucky*, 9 Wall., 353, is cited as sustaining this proposition.

If this is correct, then the comptroller of the currency is a party to such crime, if not in fact the principal offender, for he is charged by the law of congress with the duty of ascertaining and knowing the condition of the bank, and if he finds it to be insolvent, to close it. Again, sections 1884 and 1885 in such event are wholly unnecessary, for sec. 5041 of the code of Iowa had already provided for the punishment of such false pretenses as a felony, and the legislature did a vain and unnecessary thing in again providing for the punishment thereof. The proposition, however, is not correct. *Lupin* vs. *Marie*, 6 Wend., 77; *Nichols* vs. *Pinner*, 18 N. Y.,

295; *Smith* vs. *Smith Murphy Co.*, 21 Penn. St., 367. The language quoted in *State* vs. *Fields* from the opinion in *Bank* vs. *Com.* must be limited and restrained in its application to the case actually before the court and decided by it, and does not justify the conclusion drawn therefrom by Mr. Justice Rothrock as being applicable to the case actually before him for determination. It appears in that case that the legislature of Kentucky, in pursuance of the authority expressly conferred by the National Bank Act (Sec. 5219, Rev. Stat. U. S.) had provided for the levy of a tax upon the individual owners of shares of stock in all banks, including national and other moneyed corporations, at a specified rate; and if the tax so levied was not paid by such owner, it might be collected from the bank. The shareholders of the First National Bank of Louisville, in that state, having neglected to pay the tax so assessed upon their shares, the state brought suit against the bank to recover the amount of such tax. It was contended by the bank in defense of the action that the tax was in effect one upon it, and therefore unauthorized under the repeated decisions of the court, and that it was not liable therefor. The court held that if the tax was in fact upon the bank it would be void; but that it was not such a tax, and in fact only a tax upon the individual shareholders which the state was authorized by congress to levy, and that the provision of the state legislature providing for the payment by the bank was only a means of enforcing payment from the shareholder, the same as any other claim might have been enforced through process of garnishment or other legal proceeding; that the mode adopted by the state legislature was substantially the same as that adopted by congress itself in collecting its tax upon dividends and on the income arising from bonds of corporations, and in fact the common if not the only mode of collecting the tax from the shareholders of corporations in many of the states. It was therefore held that this method adopted by the state of Kentucky for enforcing payment of the tax was in no sense an interference with the regulation or control of the management or business of the bank or of any act authorized by congress to be done by its officers or agents. It is perfectly manifest, we think, that the questions involved are not analogous to those here; and that the language of the opinion must be limited to the questions involved and decided, and not extended to others not in the case.

As we have already said, it is only the acts of an officer of a na-

tional bank, in the performance of its ordinary business as authorized by law of congress, with which we have to deal in this case, and not the rights of the bank under any contracts made by such an officer. For instance, an agent of the United States is duly authorized to purchase supplies for the army, or property for any other purpose. It seems clear that the agent could not be fined or in any manner interfered with by the state in so doing, though the property so purchased by him would be subject to prior liens or defects in title or other infirmities the same as though purchased by or for a private individual; and the rights of the government in and to such property would depend upon the general principles of law applicable thereto, the same as would the rights of an individual; and in this respect the rights acquired under such acts of the agent might be subject to local laws, while the act of the agent in so purchasing could not be. When, therefore, it is said that the federal officer or agent is subject to the local law of the state "which affects his family, social relations, and property in common with all other citizens" it clearly means as it says, that he is so subject to, and affected by, such law in his private capacity, and not in an official capacity or as an agent of the United States in the discharge of his duties as such, nor as to his acts which may be done in his private capacity in pursuance of and as authorized by a law of the United States. That it is not intended to depart from the repeated decisions of the court in *McCullock* vs. *Maryland*, and other cases, holding that the operations or functions of national banks are exempt from state regulation and control except as may be directly permitted by congress is expressly stated in the opinion.

The law of Iowa under consideration is of an entirely different nature. It is not authorized by any law of congress; it does not and is not intended to operate upon or affect the private property of the bank, nor of an officer or agent of the bank, or such officer in his individual or private capacity; *does not make fraud an element of the offense;* but is intended to and does directly affect the operations of the bank by which it performs its functions as *expressly authorized by the laws of congress*, and upon the officers as such who perform such acts. Now the fact alone that the First National Bank of Decorah was permitted by the comptroller of the currency, acting under the law of congress, to remain open and continue its business in the usual manner, cannot under any view of the law be held to be an un-

lawful act on the part of the bank or its officers; certainly the National Bank Act nor the officers of the United States charged with its enforcement do not so recognize it; nor is there any authority for holding, so far as we can discover, that the fact alone that one continues in business in the usual manner, after becoming insolvent, is acting fraudulently even, much less criminally. On the contrary, wherever transactions by one so continuing in business have been held fraudulent, there has been some fact or circumstance proven which takes the transaction out of the usual or ordinary course of the business and shows a specific intent to perpetrate a fraud in committing such transaction. *Nichols* vs. *Pinner*, 18 N. Y., and *Smith* vs. *Smith Murphy Co.*, above; *Blow* vs. *Gage*, 44 Ill., at page 217; *Talcott* vs. *Henderson*, 31 Ohio St., 162; *People* vs. *Healy*, 128, Ill., 9. There is nothing of that kind shown here, nor could there be, and as we have seen, the supreme court of Iowa finds and holds that at the time the plaintiff in error received this money from John French the First National Bank of Decorah was open and conducting its business in the usual manner, and continued to do so for nearly three months thereafter. The bank then was certainly conducting its business legally under the law of congress with the assent and approval of the comptroller of the currency, and no officer of the state of Iowa could have prevented it from doing so, or from continuing to do so. It could only transact such business, however, through its officers or agents. Can such an officer or agent then be held guilty of a crime in doing that which it was lawful for the bank to do? It would seem not.

In behalf of the state the *License Cases*, 3 Wall., 387, and 5 Wall., 462, holding that the tax imposed by the United States upon distillers and liquor dealers, and other cases holding that an act may be an offense against both the United States and state laws and punished by both, were referred to in the supreme court of Iowa in support of the contention that it was competent for the Iowa legislature to enact the law in question. These cases are inapplicable and do not support such contention.

In *The License Cases* the internal revenue laws of 1862 and 1864 under which they arose contain this provision: "That no such license, if granted, shall be construed to authorize the commencement or continuation of any trade, business, occupation, or employment therein mentioned within any state or territory of the United States in which it is or shall be specifically prohibited

by the laws thereof, or in the violation of the laws of any state or territory." This provision is now included in Sec. 3243 Rev. Stat. U. S. The National Bank Act contains no such provision. These cases only hold that the taxes imposed under this law are in effect an occupation tax, and that there was no purpose on the part of congress to confer authority upon the persons holding the licenses to carry on the business upon which the tax is laid. Instead of sustaining the contention of appellee, they announce a rule directly opposite thereto. Thus, in 5 Wall., at page 470, the court, after holding as above stated, says: "It is not doubted " that where congress possesses constitutional power to regulate " trade or intercourse, it may regulate by means of licenses as " well as by other modes, and in case of such regulation the li- " cense will give to the licensee authority to do whatever is au- " thorized by its terms. * * All such licenses confer authority " and give rights to the licensee." As a corrollary it must follow that the licensees would be protected in whatever their licenses authorized them to do.

The cases upon the other point are equally inapplicable, for the United States has not made the act charged against the plaintiff in error an offense, but, as we have seen, has expressly authorized such act to be done by him.

2d. *Is this law of Iowa valid as being a proper exercise of the police power of the state, as held in State vs. Fields?*

This, or the taxing power of the state, is always invoked to sustain state legislation which infringes upon some law of congress or provision of the federal constitution; but without avail in this court. It was so invoked in all of the foregoing cited cases and others in this court, and the uniform holding has been that as to matters national in character, and which should be controlled by laws of uniform operation, no action by congress was necessary to prohibit the states from acting thereon; and as to matters of a local nature, or of which the states may have concurrent jurisdiction with the general government, if congress has legislated thereon then such legislation excludes any by the states with reference to such subject matter except as may be expressly permitted by congress. Thus,

In *Gibbons* vs. *Ogden*, 9 Wheat., 1, Chief Justice Marshall speaking for the court said: "Since, however, in exercising pow- " ers and regulating their own internal affairs whether trading

"or police the states may sometimes enact laws the validity of "which depends upon their interfering with and being contrary "to an act of congress the court will enter upon the inquiry "whether or not the laws of the state as expounded by its high- "est tribunal have in their application come into collision with "an act of congress and deprived a citizen of a right to which "that act entitles him. Should this collision exist, it will be "immaterial whether those laws were passed in virtue of a con- "current power in the state or in virtue of a power to regulate "their domestic trade and police. In either case the act of the "states must yield to the law of congress."

In *Crandall* vs. *Nevada*, 6 Wall., 42, it was sought to uphold the statute there involved upon the ground that it was one within the taxing power of the state, the greatest of all the sovereign powers. In holding the act void, the court at page 44 says: "The question of the taxing power of the states as affecting the "functions of the federal government has been repeatedly con- "strued by this court, and the right of the state in this mode to "impede or embarrass the constitutional operations of that gov- "ernment or the rights which citizens hold under it has been uni- "formly denied," citing *McCullock* vs. *Maryland*, 4 Wheat.; *Brown* vs. *Maryland*, and other cases. * * "In all these cases "the opponents of the taxes levied by the states were able to "place their opposition on no express provision of the statute ex- "cept in *Brown* vs. *Maryland*. In the other cases, and in that "also, the court distinctly placed the invalidity of the state laws "on the ground that they interfered with an authority of the fed- "eral government which was itself only to be sustained as ne- "cessary and proper to the exercise of some other power ex- "pressly granted."

In *Henderson* vs. *Mayor*, 92 U. S., 259, a statute of the state of New York was claimed to be within the rightful exercise of the police power of the state. In declaring this law to be void, the court at page 271 says: "This power, frequently referred to in "the decisions of this court, has been in general terms somewhat "loosely called the police power; it is not necessary for the cause "of this decision to attempt to define it more accurately than it "has been defined already, because whatever may be the nature "and extent of that power where not otherwise restricted, no "definition of it and no urgency for its use can authorize a state "to exercise it in regard to a subject matter which has been con-

" fided exclusively to the discretion of congress. Nothing is gain-
" ed in argument by calling it the police power. It is clear
" that when the statute of the state invades the domain of legis-
" lation which belongs exclusively to the congress of the United
" States it is void, no matter under what class of powers it may
" fall or how closely allied to powers said to belong to the state."

All of these cases show that state legislation which conflicts or in any manner interferes with a law of congress, or attempts to regulate or control rights or privileges granted thereby, is impotent, no matter under what power of the state it is claimed to have been enacted.

Congress has not provided a penalty of fine or imprisonment for the receipt of deposits by the bank, or its officers and employees, when it is insolvent, and it is believed that it purposely omitted doing so. It has, however, provided by sec.5209 of the Revised Statutes for the severe punishment of such acts of the officers and agents of the bank as may result *in* its insolvency; and by sections 5234-5239 for the consequences that shall result *from* such insolvency, viz.; that the comptroller of the currency shall take possession of the bank, deprive the owners thereof, wind up its affairs, and make ratable distribution of its assets, and for the dissolution by a federal court of the association. This is all that congress has so far deemed it expedient to enact. Now, if the law of Iowa shall be held to apply to such banks, who shall determine the condition of those doing business in Iowa and whether or not the comptroller of the currency may permit them to continue to do business? Shall it be the comptroller of the currency, from the reports of their condition made by their officers to and the examinations made by him as authorized and required by the laws of the United States, or a jury in a trial in a state court of an indictment against the bank or some officer thereof? There is certainly no other way in which it can be done under the authority of the state laws, for it must be conceded that the state officers charged with the supervision of banks doing business under state laws have no authority in the premises. Under the system of examinations and reports provided for and required by law, the comptroller of the currency is informed every two or three months, and oftener if he so requires, of the condition of the national banks; and from such reports and examinations he is enabled to determine whether or not he shall permit them to continue in

business, or close them and deny them that right. This discretion is undoubtedly given him under the law, and for an obvious purpose. He may believe that the condition of the bank is such that if allowed to continue in business no damage whatever will result to it or its patrons, while to close it would bring ruin upon the bank and disaster to its creditors. Is it permissible, then, for the state to say that the comptroller shall be deprived of this discretion; that it may authorize the district court to empanel a jury, or in any other manner to determine, whether the bank is insolvent and not entitled to continue its business, regardless of the discretion lodged with the comptroller to so permit? It is difficult to conceive of a procedure that would more effectually interfere with the management, operation and functions of a bank than this, or one that would be more disastrous to it as a going concern; practically suspend its operations during such time, and ultimately result in closing it. It is no answer to this to say that after the bank is adjudged insolvent by the comptroller and placed in the hands of a receiver, this can be done without interfering with its operations. The question is one of the power in the state to authorize it at all. If it can do so after the comptroller has adjudged the bank insolvent, it can do so before, and while the bank is a going concern; in fact the question of its solvency or insolvency must be determined as of the date of the deposit, which in this case was on August 21st, 1896, nearly three months before the bank was closed, and the act of the plaintiff in error is to be judged as of that date, and not at the time it was closed. If the state could not have made the investigation on August 21st, 1896, it could not do so subsequently; and the court, in *State* vs. *Fields*, expressly declined to hold that it could do so, and seemed to place its ruling upon the ground, in part at least, that by the demurrer insolvency was admitted, and that it was unnecessary to determine such question. What effect such admission had upon the ultimate holding of the court can only be determined from what is said in its opinion.

The purpose of congress was to establish a uniform system for the control and government of the business of national banks; but if one state may impose one condition, another may impose something else, and the rule of uniformity thus prescribed is completely abrogated; and the comptroller of the currency must take notice of all these different conditions, regulations and

prohibitions imposed by state laws and be governed by them in his supervision of national banks.

The right of a bank to accept deposits is essential to enable it to continue in business. No bank could successfully conduct a banking business for any length of time and supply the demands of commerce or the trading community in which it is located without such right, and the actual exercise thereof. *Osborne* vs. *Bank*, above. Congress well understood this, and when it conferred upon national banks this authority to receive deposits to an unlimited amount, it must have intended to permit them to exercise the right untrammeled by any action of the state, and subject only to such penalties as it has provided for acts that might impair the capital of the bank or result in its insolvency, and to such consequences as would result from insolvency. To deny to the bank the right to receive deposits is to deny to it the right to continue in business; to impose conditions thereon is to impose conditions upon its right to continue such business. As well might the state say that national banks shall not discount or negotiate promissory notes; buy bills of exchange or bullion; make loans upon personal security; or do any other act, for that matter, which the law of congress says it may do. No one would seriously contend that the state might do this; yet such a law would no more interfere with the functions of the bank, or more effectually prevent it from continuing its business than the law under consideration. Unless then it be conceded that the state may prevent national banks from continuing their business when they become insolvent or when their capital becomes impaired this law cannot be upheld. The law of congress and the certificate issued by the comptroller of the currency to the First National Bank of Decorah is a full grant of authority by the United States to the bank, and to this plaintiff in error as its president, to do that which the law authorizes, among other things being the right to receive this very deposit in question. It would be manifestly inconsistent and absurd for congress to thus permit the bank to continue its business and receive deposits, require it to pay taxes thereon to the United States, and then impose a penalty of fine or imprisoment upon its officers for doing that which it thus permits and exacts. It is therefore believed that congress purposely avoided enacting such absurdity into a law, and that it intended that the states should not do so.

Upon any view of the case, then, it would seem that it must be held that national banks are not permitted to be "organized and their business prosecuted for the purpose of private gain;" that the National Bank Act does authorize such banks to receive deposits while conducting their business in the usual and ordinary manner, without attempting to limit the amount or circumstances thereof except as provided in said act; that such legislation of congress excludes any by the states upon such subject matter; and that it is not therefore competent for the state to prohibit such banks or their officers from so receiving such deposits, or say that such an act, so done by them without any fraudulent intent or purpose, is a crime and shall be punished as such.

To the suggestion of Mr. Justice Rothrock in *State* vs. *Fields*, that congress could not have intended that national banks should be permitted to receive deposits when insolvent, and that the law of Iowa might well have been intended as an aid to the general government to maintain the credit of its national banks, we need only say that that is purely a legislative and not a judicial question. *Hadden* vs. *Collector*, 5 Wall., 107. When the line which marks the boundary between the powers of congress and those of the states is ascertained, the power of each must be restricted within its proper limits. If further legislation applicable to national banks is needed, congress alone has the power to enact it.

Sec. 5202 of the Rev. Stat., however, expressly gives to the bank authority to receive deposits in an unlimited amount, regardless of the capital of such bank.

3d. *Do sections 1884 and 1885 of the Code of Iowa unjustly discriminate against banks and their officers and agents, and deny to them the equal protection of the laws?*

This question was raised in the state courts by the motion to quash and the demurrer to the indictment, (Transcript, pages 2, 3, and 4); and their action in sustaining the validity of the law is the ground of the eighth assignment of error here. (Transcript, page 45).

The term "deposit" has a well recognized meaning when used in commercial and bank transactions. It is defined to be "A delivery of money to a bank, to be kept without reward, and returned on demand." *Webster's Dictionary; Anderson's Law Dictionary; Marine Bank* vs. *Fulton Bank*, 2 Wall., 256; *Phoe-*

nix Bank vs. *Risley*, 111 U. S., 126; *Curtis* vs. *Leavitt*, 15 N. Y., 166. It is undoubtedly so used in the National Bank Act.

True, this creates the relation of debtor and creditor between the bank and depositor, but it is a debt due for property received by the bank from the creditor, and to be returned on demand without compensation to or by the bank; a gratuitous bailment. It is this which gives it its character of a deposit. When by the terms of the contract between the parties such debt is not to be paid by the bank upon demand, but at a future time agreed upon between the parties, and interest is to be paid by the bank for the use of the money, it loses its character of a simple deposit and becomes one for an ordinary loan of money between the parties. Shanklin, J., in *Curtis* vs. *Leavitt*, above, at page 166. The contract of August 21st, 1896, between the First National Bank of Decorah and John French, is of the latter named character. (See this contract, *ante* page 6). In *Bean* vs. *Briggs*, 1 Iowa, 488, the supreme court of Iowa holds such a contract to be a negotiable promissory note, and the transaction evidenced thereby one for the loan of money; and the authorities generally so hold. In *State* vs. *Boomer*, 103 Iowa, 106, as well as in the present case, that court however holds the law of Iowa under consideration to be applicable to a transaction evidenced by such a promissory note.

Is it permissible, then, for the legislature of the state to say that a bank or person doing a banking business shall not borrow money in this way, when insolvent, to be paid with interest at a fixed time in the future, when it does not deny such right to other insolvent debtors? If so, then the moment the bank or such person becomes insolvent, as that term is construed by the supreme court of Iowa, no matter what its assets may be, or how certain it is that they are sufficient to ultimately pay all debts in full, it must suspend business and proceed to wind up its affairs. If the law applied only to simple deposits as that term is ordinarily understood, it might with some reason be said that it was a legitimate classification of persons conducting such business because of the nature thereof for the purpose of regulating and controlling it; but when it goes further and extends to contracts so made for a loan of money for a definite time, it ceases to be legitimate classification and becomes an arbitrary selection of such persons, and prohibits them when insolvent from making legitimate con-

tracts in the ordinary course of business for the borrowing of money to be paid at a future time upon a valid consideration agreed upon by the parties; while all others of the community may lawfully make such contracts, though in the same condition of insolvency. Persons conducting a banking business should no more be denied the right of private contract when insolvent than should other persons. The law in such event unjustly discriminates against banks and persons conducting a banking business; deprives them of the equal protection of the laws, and those doing business under the law of congress of rights and privileges granted thereby, in contravention of the fourteenth amendment to the federal constitution; and falls within the class of legislation condemned by this court in *Gulf C. & S. F. Ry. Co.* vs. *Ellis*, 165 U. S., 150, and the cases there cited. See also *State* vs. *Scougel*, 51 N. W. Rep., 858, (S. Dak.); and *Carr* vs. *State*, 106 Ala., 35; where similar statutes are held void because repugnant to the constitution of these states respectively.

It is believed that these sections of the law of Iowa are repugnant to the constitution and to a law of the United States, and void. The plaintiff in error has challenged their validity at every opportunity during the progress of this case against him; and he now asks of this court that the judgment of the supreme court of Iowa be reversed, that the cause be remanded to that court with directions to reverse the judgment of the district court of Iowa in and for Fayette county and to discharge him from the effect thereof.

Respectfully submitted,

H. T. REED, C. W. REED,
for the Plaintiff in Error.

APPENDIX A.

STATE OF IOWA, Appellant, vs. WILLIAM FIELDS.

(Supreme Court of Iowa. April 3, 1895).

(98 Iowa, 748.)

Appeal from district court, Buchanan county; John J. Ney, Judge.

The defendant was president of the First National Bank of Cedar Falls, in this state, and was indicted for receiving a deposit of money in said bank when he knew it was insolvent. There was a demurrer to the indictment, which was sustained, and the state appeals. Reversed.

G. W. Dawson, attorney, of Blackhawk county, and E. E. Hasner, attorney, of Buchanan county, for the state. Hemenway & Grundy, Mullan & Pickett, and Powers, Lacy & Brown, for appellee.

ROTHROCK, J. The indictment is founded on sections 1, 2, chapter 153, of the acts of the eighteenth general assemby of this state. Section 1 of said act is in these words: "That no bank, banking house, exchange broker, deposit office, or firm, company, corporation, or party engaged in the banking, broker's exchange, or deposit business shall accept or receive on deposit, with or without interest, any moneys, bank bills, or notes, or United States treasury notes or currency, or other notes, bills or drafts circulating as currency, when such bank, banking house, exchange broker or deposit office, firm or party is insolvent." Section 2 of the act provides that if any such bank, exchange broker, company, or corporation shall receive or accept on deposit any money when insolvent, any "officer, director, cashier, manager, member, party, or managing party thereof, knowing of such insolvency, who shall knowingly receive or accept, be accessory or permit or connive at the receiving or accepting on deposit therein or thereby, any such deposits as aforesaid, shall be guilty of a felony." The punishment, upon the conviction, is imprisonment in the penitentiary for a term not exceeding ten years.

It is not necessary to set out the demurrer to the indictment. There are really but two questions presented for our consideration. One is that the statute under which the indictment was found is not applicable to officers of national banks. There is nothing in the act authorizing the conclusion that any banking institution is excluded from its operation. On the contrary, by

its language it includes all banks, whether organized under the laws of the state or the acts of congress.

2. The real question in the case is whether the statute above cited is an attempt to control and regulate the business operations of a national bank. It is contended in behalf of appellee that the state has no power to punish an officer of a national bank for receiving deposits when he knows that the bank is insolvent, because it is a direct interference, and an attempt to prescribe a condition upon which deposits may not be received. It is conceded that there is no act of congress prohibiting the receipt of deposits at any time before an insolvent bank is taken out of the control of its officers under the provisions of the federal statute. Under the act of congress of June 3, 1864, and amendments thereto, when a banking association has complied with the law, and received a certificate, it is authorized to commence a banking business under the regulations prescribed in sections 5190-5219 of the Revised Statutes of the United States, inclusive. And the seventh subdivision of section 5136 is in these words: "Seventh. To exercise by its board of directors, or duly authorized officers and agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money upon personal security; and by obtaining, issuing and circulating notes according to the provisions of the title." It has been several times held by the supreme court of the United States that a state cannot impose a tax upon national banks unless permitted to do so by act of congress. *McCullock* vs. *Maryland*, 4 Wheat., 435; *Brown* vs. *Maryland*, 12 Wheat., 449. And in the case of *Bank* vs. *Dearing*, 91 U. S., 29, it was held that a state had no power to provide a penalty against a national bank for taking usurious interest in excess of that prescribed by act of congress. It is contended by counsel for appellee that the statute under which this indictment was found is a direct interference with the right to receive deposits, and that, within the principle of the cases above cited, an officer of a bank, even though the institution is actually insolvent, cannot be punished under a state enactment for receiving deposits, knowing that his bank is insolvent. The argument, briefly stated, is that, if a state has the power to provide that a national bank shall not receive deposits

under one state of circumstances, it has the power to so provide under any other circumstances, as that it shall not take deposits unless it holds in its possession one-half of its deposits and capital as a reserve fund. We think the argument of counsel that the act in question is an attempt to regulate the business of the bank is not a proper construction of the law.

It is to be remembered that by the demurrer to the indictment the defendant admits that the bank was insolvent when he received the deposit, and that he knew it was insolvent at that time. The acts of congress provide no penalty for the fraudulent receiving of deposits, and the statute under consideration operates upon the person who commits the crime. And it is not a material question to determine whether it will be necessary to investigate the financial condition of the bank to prove that the bank was insolvent when the deposit was received. This statute is in the nature of a police regulation, having for its object the protection of the public from the fraudulent acts of bank officers. The mere fact that in violating the law of the state the defendant performed an act pertaining to his duty as an officer of the bank does not in any manner interfere with the proper discharge of any duty he owes to any power, state or federal. Surely, it was not intended by any act of congress that officers of a national bank should be clothed with the power to cheat and defraud its patrons. National banks are organized and their business prosecuted for private gain, and we can conceive of no reason why the officers of such banks should be exempt from the penalties prescribed for fraudulent banking. Suppose that the deposit in this case had been for such an amount that the depositor thought it important to inquire of the president of the bank as to the condition of institution as to solvency, and had been answered that it had ample means and a large surplus, and on the faith of such representations the deposit was made, and within a few days thereafter its doors were closed, and such a condition of affairs disclosed as showed that the bank had been for a long time insolvent. What defense could be interposed to an indictment for obtaining money by false pretenses? The claim that the defendant was not liable to indictment and punishment because he was in the performance of a duty under the national banking law would meet with but slight consideration in any court. The supposed case is not in all particulars parallel with the one at bar, but they are in principle the same. The only difference is that in

the supposed case the affirmative representation of solvency is made, and in the case at bar the open bank, receiving and paying out money, is in effect a representation that it is a solvent institution. The question is important. National banks are located and doing business in every county in the state, and we are aware of no decision of any court, state or federal, which exempts their officers from the penalties which are prescribed by acts like that under consideration. And it surely should require most cogent reasons for the establishment of any such a rule. It would be a premium offered to officers of national banks for dishonest practices. In the case of *National Bank* vs. *Commonwealth*, 9 Wall., 353, it was held that a state had the power to tax the shares of a stockholder in a national bank. It is said in that case that the doctrine that a national bank cannot be subjected to a tax on its capital "has its foundation in the proposition that the right of taxation may be so used in such cases as to destroy the instrumentalities by which the government proposes to effect its lawful purposes in the states, and it certainly cannot be maintained that banks or other corporations or instrumentalities of the government are to be wholly withdrawn from the operation of state legislation. The most important agents of the federal government are its officers; but no one will contend that when a man becomes an officer of the government he ceases to be subject to the laws of the state. * * The limitation is that the agencies of the federal government are only exempted from state legislation so far as that legislation may interfere with or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers into an unauthorized and unjustifiable invasion of the rights of the states. The salary of a federal officer may not be taxed; he may be exempted from any personal services which interfere with the discharge of his official duties, because those exemptions are essential to enable him to perform those duties; but he is subject to all of the laws of the state which affect his family or social relations or his property, and he is liable to punishment for crime, though that punishment be imprisonment or death. So of the banks. They are subject to the laws of the state, and are governed in their daily course of business far more by laws of the state than of the nation. * * It is only when the state law in-

capacitates the banks from discharging their duties to the government that it becomes unconstitutional." We have made this copious extract from the opinion in the cited case because its reasoning is peculiarly applicable to the question presented by this appeal. How it can be possible that the act punishing bank officers for receiving deposits when they know the bank is insolvent can be construed as incapacitating the bank from any duty to the government is more than we can understand. The act should rather be held to be an aid to the government in maintaining the credit and standing of national banks; being, as it is, a prohibition, under a heavy penalty, for any officer to dishonestly take the money of customers when he knows that the bank is insolvent. The judgment of the district court is reversed.

APPENDIX B.

Chapter 10, Title IX., of the Code provides for the organization and management of savings banks. It need not be specifically set out.

Chapter 11 provides for the organization of state banks, and so far as necessary to be noticed is as follows:

OF STATE BANKS.

Section 1861. Associations organized under the general incorporation laws of this state for transacting a banking business, buying or selling exchange, receiving deposits, discounting notes and bills, other than savings banks, shall be designated state banks, and shall have the word "state" incorporated in and made a part of the name of such corporation; and no such corporation shall be authorized to transact business unless the provisions of this code have been complied with. (21 G. A., ch. 72, §1).

Section 1862. No partnership, individual or unincorporated association engaged in buying or selling exchange, receiving deposits, discounting notes and bills, or other banking business, shall incorporate or embrace the word "state" in its name, but this section shall not apply to associations organized under the laws of the United States. (Same, §3).

Section 1863. State banks may be hereafter organized by not less than five persons of lawful age, who shall, prior to the commencement of business, sign and acknowledge articles of incorporation before some officer authorized to take acknowledgements of deeds. Such articles of incorporation shall state: (The requirements are specified in detail); and shall be filed and recorded, and notice of incorporation given, as provided by section 1842 of the code.

Section 1864. No state bank shall be organized under the provisions of this chapter with a less amount of paid up capital than fifty thousand dollars, except in cities or towns having a population not exceeding three thousand, where such * * capital shall be not less than twenty-five thousand dollars. * *

Section 1865. The capital of state banks hereafter organized shall be divided into shares of one hundred dollars each. * *

Section 1866. The business and property of each state bank shall be managed by a board of directors of not less than five, all of whom shall be shareholders.

Section 1867. All state banks located in cities and towns having a population of less than three thousand inhabitants shall at all times maintain a reserve of not less than ten per cent of their total deposits, and * * in cities and towns of more than three thousand * * of not less than fifteen per cent of their total deposits. * *

CHAPTER 12.—OF BANKS.

Section 1868. * *
Section 1869. * *
Section 1870. * *
Section 1871. * *

Section 1872. All savings and state banks shall make a full, clear and accurate statement of the condition of the bank, verified by the oath of the president, vice-president, cashier, or assistant cashier, and attested by the signatures of at least three of the directors, or verified by the oath of two of its officers and attested by two of the directors, which statement shall contain (a detailed statement of the assets and liabilities of the bank under proper headings, showing the nature thereof) and transmit the same to the auditor of state within ten days after request by him therefor. (15 G. A., ch. 60, §22).

Section 1873. The auditor of state may, at any time he may see proper, make or cause to be made an examination of any savings or state bank, or he shall call upon it for a report of its condition upon any given day which has passed, as often as four times each year, which report shall contain the information under the preceding section. * *

Section 1874. The auditor of state shall also have power to call for special reports from savings and state banks whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of their condition, which reports shall be verified and attested in the same manner as required in this chapter.

Section 1875. The auditor of state may appoint one or more bank examiners, to hold office at his pleasure, who shall give bond to the state, conditioned for the faithful discharge of their duties, in the sum of two thousand dollars, which shall be filed with and the sureties therein approved by said auditor. (23 G. A., ch. 50, §1).

Section 1876. * *

Section 1877. When it shall appear to the auditor of state that any savings or state bank has refused to pay its deposits in accordance with the terms on which such deposits were received, or has become insolvent, or that its capital has become impaired, or has violated the law, or is conducting its business in an unsafe manner; he shall, by an order addressed to such bank, direct a discontinuance of such illegal or unsafe practices, and require conformity with the law; (and authorizes the auditor of state to take possession of the bank, and make distribution of its assets, and wind up its affairs, under the direction of the court. (Same, §25).

Section 1878, provides that if the capital stock of any state or savings bank becomes impaired by losses or otherwise, the auditor of state may require an assessment upon the stockholders sufficient to repair the deficiency. (25 G. A., ch. 29, §1).

Section 1879 provides for the manner of the collection of such assessment. (Same, §2).

Section 1880. * *

Section 1881. It shall be the duty of the auditor of state to communicate to the governor in his biennial report a statement of the condition of every bank from which reports have been received for the preceding year. * * (15 G. A., ch. 60, §24).

Section 1882. * *

Section 1883. * *

Section 1884. No bank, banking house, exchange broker, deposit office, firm, company, corporation or person engaged in the banking, brokerage, exchange, or deposit business, shall, when insolvent, accept or receive on deposit, with or without interest, any money, bank bills or notes, United States treasury notes or currency, or other notes, bills, checks or drafts, or renew any certificate of deposit. (18 G. A., ch. 153, §1).

Section 1885. If any such bank, banking house, exchange broker, deposit office, firm, company, corporation or person shall receive or accept on deposit any such deposits, as aforesaid, when insolvent, any owner, officer, director, cashier, manager, member or person knowing of such insolvency, who shall knowingly receive or accept, be accessory, or permit, or connive at receiving or accepting on deposit therein, or thereby, any such deposits, or renew any certificate of deposit, as aforesaid, shall be guilty of a felony, and, upon conviction, shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment in the peniten-

tiary for a term of not more than ten years, or by imprisonment in the county jail not more than one year, or by both fine and imprisonment. (Same, §2).

Section 1886. Any officer or officers whose duty it is to make statement of the condition of its bank, and make publication of same, who shall willfully neglect or refuse to perform such duties imposed upon them or either of them, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not less than three months nor more than three years in the penitentiary.

Section 1887. Any owner, director, officer, agent employe or clerk of any bank, who shall knowingly subscribe or make any false statements or false entries in the books thereof, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe and make false reports, or shall knowingly divert the funds of the bank to other objects than those authorized by law, shall be punished by a fine not exceeding ten thousand dollars, and be imprisoned in the penitentiary not less than two nor more than five years, and be forever after barred from holding any office created by this chapter. (15 G. A., ch. 60, §26).

Section 1888. Any owner, director, officer, agent, employe or clerk of any bank, who is guilty of intentional fraud, or of deceiving the public or individuals in relation to the means or liabilities of such bank, or who aids, assists or consents to the payment of dividends which leave insufficient funds with which to meet the liabilities of the bank, shall be punished by a fine of not less than five hundred dollars, or imprisonment of not less than one year, or both such fine and imprisonment, at the discretion of the court; and such act shall cause a forfeiture of all the privileges of said bank, and the court may proceed to close the same in the manner prescribed by law. (Same, §27).

Section 1889. The president and cashier of every savings and state bank shall cause to be kept at all times a full and correct list of the names and residences of the officers, directors, examining committee, and of all the stockholders in the bank, and the number of shares held by each, in the office where its business is transacted. * * A copy of such list, verified by the oath of the president or cashier, shall be transmitted to the auditor of state within ten days after each annual meeting. No corporation shall

engage in the banking business, receive deposits, and transact business generally done by banks, unless it is subject to and organized under the provisions of this title, or of the banking laws of the state heretofore existing, except that loan and trust companies may receive time deposits and issue drafts on their depositaries, but such companies shall be subject to examination, regulation and control by the auditor of state, like savings and state banks, and their stockholders shall be liable to the creditors of such companies as provided in section eighteen hundred and eighty-two of this chapter for stockholders in savings and state banks. Any corporation violating this section shall forfeit its charter at the suit of the attorney-general, and said corporation, its officers, directors and agents, shall be punished by a fine of not less than five hundred dollars, or imprisonment of not less than two years in the penitentiary, or by both such fine and imprisonment, at the discretion of the court; provided that loan and trust companies organized under the general incorporation laws of this state, which were engaged in the banking business prior to the first day of January, 1886, and have continued therein since said date, may, by the proper additions to their articles of incorporation, become state banks within the provisions of this title, without incorporating the word "state" in the names of such corporations.